STATE OF MICHIGAN

COURT OF APPEALS

In the Matter of NATHANIAL FOREST and SETH FOREST, Minors.

FAMILY INDEPENDENCE AGENCY,

Petitioner-Appellee,

v

JENNIFER FOREST,

Respondent-Appellant,

and

LEE FOREST,

Respondent.

UNPUBLISHED
October 23, 2003

No. 247218
Kent Circuit Court
Family Division
LC No. 02-254100

Before: Bandstra, P.J., and Hoekstra and Borrello, JJ.

MEMORANDUM.

Respondent-appellant appeals as of right from the trial court order terminating her parental rights to the minor children under MCL 712A.19b(3)(b)(ii) and (j). We affirm. This case is being decided without oral argument pursuant to MCR 7.214(E).

The trial court did not clearly err in determining that the statutory grounds for termination were established by clear and convincing evidence. MCR 5.974(I), now MCR 3.977(J); *In re Miller*, 433 Mich 331, 337; 445 NW2d 161 (1989). The evidence clearly showed that Nathanial was sexually abused, and that Seth was permanently brain damaged as the result of being severely shaken. These injuries were attributable to respondent-appellant's failure to protect them from others, or possibly her own actions. Respondent-appellant, because of her limited capacity, was unable to adequately discern dangers presented by other people and circumstances and thus failed to protect the children or leave them with adequate supervision. She had received services since August 2000, but had not benefited, and the trial court correctly concluded that the children were likely to be harmed if returned to respondent-appellant. No amount of counseling or other services would ever remedy her impairment, and the evidence showed that the benefit

respondent-appellant received from counseling was limited and not likely to improve her ability to care for the children.

Likewise, the trial court did not err in determining that the evidence did not show that termination of respondent-appellant's parental rights would be contrary to the children's best interests. MCL 712A.19b(5); *In re Trejo*, 462 Mich 341, 356-357; 612 NW2d 407 (2000). Thus, the trial court did not err in terminating respondent-appellant's parental rights.

The trial court also did not abuse its discretion in denying respondent-appellant's motion for a new trial after the guardian ad litem asked a testifying police officer whether respondent-appellant or her boyfriend were offered polygraph examinations. While there is a well-established bright line rule that reference to taking or passing a polygraph examination is error, merely referring to a polygraph examination does not always constitute error requiring reversal. *People v Nash*, 244 Mich App 93, 98; 625 NW2d 87 (2000).

In reviewing the factors designed to assess whether the polygraph reference constituted error, as outlined in *Nash*, we find that the error, though not inadvertent, was brief. No mention was made of whether a polygraph was given or the result. A curative instruction was offered but declined by respondent-appellant. Additionally, although it is possible that the jury may have concluded from the reference that respondent-appellant did not take, or failed, a polygraph, it could just as likely have concluded that she did take it and passed. The police officer asked about the polygraph examination testified that he believed respondent-appellant's answers to his questions and did not feel that she was covering up information. Likewise, the jury heard respondent-appellant's testimony that only she and her boyfriend were caring for Seth at the time he suffered injury, which indicated that respondent-appellant was being candid and not hiding any facts.

Affirmed.

/s/ Richard A. Bandstra
/s/ Joel P. Hoekstra
/s/ Stephen L. Borrello